

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	
CYNTHIA TOPOLESKI, Revenue	:	
Officer, and INTERNAL REVENUE	:	
SERVICE,	:	
	:	
Plaintiffs,	:	
	:	NO. 3:MC-08-101
v.	:	
	:	(JUDGE CAPUTO)
THOMAS HOUSER,	:	
	:	
Defendant.	:	

ORDER

The Court notes the filing of the Complaint to Enforce Internal Revenue Summons which seeks (1) an order to show cause on the Defendant to show why he should not comply with and obey the summons issued by the Internal Revenue Service; (2) an order directing the Defendant to obey the summons; (3) costs; and (4) such other relief the Court deems appropriate. Since this is an enforcement proceeding brought pursuant to 26 U.S.C. §7604(a), the burden is on the government to show (1) the investigation is being conducted for a proper purpose; (2) the information sought might be relevant to that purpose; (3) the information is not already in the possession of the Internal Revenue Service; and (4) the statutorily required administrative procedures have been satisfied. *United States v. Powell*, 379 U.S. 48, 57-58, 85 S.Ct. 248, 255 (1964). A rule to show cause places an improper burden on the defendant at the initial stage of the proceeding and thus the request for the order to show cause will be denied. The case will proceed on

complaint and answer, and the Defendant shall respond to the complaint requesting an order of compliance with the summons in accordance with the Federal Rules of Civil Procedure.

THEREFORE, IT IS HEREBY ORDERED that:

1. The request for an order to show cause why Defendant should not comply with and obey the summons issued by the Internal Revenue Service is

DENIED.

2. This matter shall proceed as a complaint for enforcement of the summons; and,

3. The Defendant shall respond to the complaint in accordance with the Federal Rules of Civil Procedure.

Date: April 24, 2008

/s/ A. Richard Caputo

A. Richard Caputo

United States District Judge